

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSHUA ISAAC PAYNE,

Plaintiff

v.

WALTER FAITH, *et al.*,

Defendants

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:
:
: 1:22-CV-217
: (JUDGE MARIANI)
:
:
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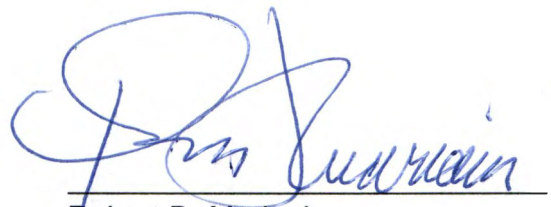
ORDER

AND NOW, THIS 22nd DAY OF MARCH, 2023, upon *de novo* review of Magistrate Judge Martin C. Carlson's Report & Recommendation ("R&R") (Doc. 16), Plaintiff's Objections thereto (Doc. 18), and all other relevant documents, **IT IS HEREBY ORDERED THAT:**

1. The R&R (Doc. 16) is **ADOPTED AS MODIFIED** herein. Although the Court agrees with Judge Carlson's reasoning, application of the *Poulis* factors, and conclusion that, at the time of the filing of the R&R, Plaintiff had failed to prosecute this action, Plaintiff's filing of objections and the reasons set forth therein for not responding to the Court's orders, as well as Plaintiff's filing of a proposed amended complaint, all lead this Court to conclude that Plaintiff should be afforded a final opportunity to pursue this action prior to the Court ordering the drastic sanction of dismissal of this action in its entirety. Nonetheless, the Court adopts Judge Carlson's analysis of the merits of Plaintiff's Complaint (see Doc.

16, at 10-13) and agrees that dismissal of the current Complaint on the merits is warranted.

2. Defendants' Motion to Dismiss (Doc. 10) is **GRANTED**.
3. Plaintiff's Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**.
4. Plaintiff's Objections (Doc. 18) are **GRANTED** only to the extent that Plaintiff will be permitted to file an Amended Complaint (*see id.* at 4).
5. Plaintiff having filed an Amended Complaint (Doc. 19), the Court deems the Amended Complaint to have been filed and to now be the operative Complaint in this matter.
6. The case is **REMANDED** to Magistrate Judge Carlson for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge